IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATEDA: 7.1.2005

CORAM:

THE HOURABLE MR. JUSTICE A.K. RAJAN

W.P. NO. 14384 OF 2000
and
W.P.M.P. NO. 20713 OF 2003

Sri Ramachandra medical College and
Research Institute and Hospital
(Deemed University) Employees'
Association, Rep. by its
General Secretary, Mr.S.Ashok,
No.1/170, Perumal Koil Street,
Ayyappanthangal, Chennai-56. ... Petitioner

Versus

1. The Government of Tamilnadu,
   Rep. by its Secretary
   Labour and Employment Department,
   Chennai-9.

2. The Commissioner of Labour,
   D.M.S. Compound,
   Chennai-6.

3. The Joint Commissioner of Labour,
   D.M.S. Compound,
   Chennai-6.

4. The Management of Sri Ramachandra
   Medical College and Research
   Institute and Hospital (Deemed University)
   No.1, Ramachandra Nagar,
   Porur, chennai-116. ... Respondents

The petition filed under Article 226 of the Constitution of India praying for writ of certiorarified mandamus as stated therein.

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For Petitioner : Mr. P.K. Gopalraj

For Respondents : Mr. R. Muthukumarasamy,
Addl.Advocate General for
RR 1 to 3.

Mr. A. Jeenasenan for R4.

ORDER

The prayer in the writ petition is to issue a writ of certiorarified mandamus calling the records, in G.O.(D) No.424 Labour and Employment (A2) Department dated 23.06.2000, and quash the same and direct the first respondent to refer Industrial Dispute raised by the petitioner-Union for adjudication to the Industrial Tribunal.

2. The brief facts of the case are as follows:

(i) The petitioner is a trade Union registered under the Trade Unions Act. After the formation of the Union, the General-body Meeting was held on 18.7.1999; the General-body unanimously placed a charter of demands for increase in wages, dearness allowance, house-rent allowance, medical facilities and other benefits. Unable to bear the formation of the Union, the fourth respondent transferred some of the Office Bearers and active members of the Union. The charter of demands was communicated to the third respondent on 19.7.1999. The fourth respondent did not come for negotiation. The Labour Commissioner directed the Assistant Commissioner of Labour (Conciliation) II, Chennai, to conduct enquiry and resolve the dispute; accordingly, the Assistant Commissioner of Labour called both - the Union and the Management - for enquiry; the Management was advised to have direct negotiation with the petitioner-Union; in the talks, the Management requested the Union to advise its members to use the canteen facility available and it was accepted; and the Management promised to settle most of the demands, but, did not keep up the promise. After sometime, the third respondent has taken over the conciliation. The Management filed certain resignation letters; but, the persons who had signed those letters disputed the same saying that they signed under threat.

(ii) The fourth respondent Management was not paying the minimum wages to the workers. For that,

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separate proceedings were initiated. Ultimately, the third respondent filed a failure report dated 28.1.2000. The first respondent passed the Government Order, dt.23.6.2000, declining to refer the dispute for adjudication to Labour Court or Industrial Tribunal. Hence, the present petition.

3. In the counter affidavit, filed on behalf of the fourth respondent, it is stated as follows:

(i) The fourth respondent Sri Ramachandra Medical College came into existence in the year 1985; it became a Deemed University in the year 1994. More than 3000 students are receiving their teaching and training in medical, dental and various para-medical disciplines. The fourth respondent Institution having been located in a semi-urban area is catering to the needs of thousands of patients coming from rural and urban areas including areas in and around Chennai and even from other States and neighbouring countries. The hospital also has a free block for 700 beds for them, medicine as well as food is given free. Thus, the hospital engaged in 'essential service', which is protected and given a special treatment even under the Industrial Disputes Act.

(ii) The petitioner claims to have convened the general-body Meeting on 18.7.1999 and an unanimous resolution is said to have been passed on the charter of demands with the approval of the Union; but, no records are filed to that effect. The general-body Proceedings was not placed before the Authorities. There were no mala fide transfers of any persons. Transfer of employees within the same hospital premises is well within the limits and right of the Management. The petitioner Union adopted many unfair labour practice by affixing leaflets on the walls of the hospital condemning the management. Most of the demands raised by the Union were complied with even before they brought before the Conciliation Officer. The Management representative attended all the Conciliation Meetings. On 3.10.1999, when there was open discussion, the Union representatives accepted that most of the demands have already been implemented. During the conciliation proceedings, the Union wanted to fix time limit for revision of wages, and that was the solitary demand during the final talks. But, that was not agreed to by the Management due to financial constraints. The Union never enjoyed the support of the majority of the employees; a few number of employees, who joined the Union, were bent upon causing disturbance to the function of the hospital. The Assistant Commissioner of

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Labour (Conciliation-II) and the Joint Commissioner of Labour had personally interviewed a sizeable number of employees, who, on their own, went to the Office of the Assistant Commissioner and the Joint Commissioner and expressed their whole hearted support to the Management. It is not correct to say that the fourth respondent Management has not paid the minimum wages; it has been raised only with a view to prejudice the dispute. The Government Order refusing to refer the matter to the Industrial Dispute is not erroneous and it is legally sustainable. Presently, there is no dispute as "wage revision" has been done. Hence the demands raised by the petitioner are non-est in law. The petitioner did not produce the resolutions passed by the members of the Union authorising the Union to raise the charter of demands.

Hence, there is no violation of Section 2(k) of the Industrial Disputes Act. The Order of the Government declining the reference cannot be challenged. It is only administrative in nature and not subject to judicious scrutiny unless it is perverse or arbitrary. The demands raised are not for any statutory compliance but they only relate to wage revision and for extending other measures, allowances/concessions and most of the demands have already been complied with. The Union is aggrieved because management has not consulted it before announcing the various welfare measures intended for the employees.

(iii) When a substantial number of employees are not the members of the Union and when the Union itself has not obtained a proper authorization from its general-body to raise the charter of demands, the Government has rightly rejected the demand for reference. It is not obligatory for the State Government to make a reference in each and every case at the instance of the Union. The Government has to weigh the facts keeping in view the maintenance of industrial peace and smooth industrial relations between the parties, and if the Government is satisfied, it need not refer the dispute. The satisfaction of existence of an Industrial Dispute is a condition precedent to the Order of reference. None of the contentions raised by the petitioner Union is sustainable either in law or on facts. Hence, the writ petition is liable to be dismissed.

4. Mr. Gopal Raj, learned counsel for the petitioner, submitted that by declining to refer the dispute

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to the Labour Court or to the Industrial Tribunal, the Government had exceeded its jurisdiction; the Government has, in fact, adjudicated the dispute. The learned counsel further submitted that the Government cannot adjudicate the dispute. One of the grounds on which the Government refused to refer the dispute is that there are no substantial number of employees representing the Union. In this case, the Union has a strength of 451 members. Therefore, it has substantial number of employees. When the Union representing such a substantial number of workers, it's demand should have been referred.

In support of his contention, he relied upon the judgment in WORKMEN OF BROOKE BOND (L). LTD. v.. I.T. [1989 (II) LLN 699] wherein a Division Bench of this Court has held -

> "With regard to the espousal of an industrial dispute, the Act is silent. There is no provision in the Act requiring that the industrial dispute should be raised by the entire body of workmen of the industry or by every one of them or even by a majority of them. Nowhere it has been insisted that the workmen raising the industrial dispute should be a body of majority. If the industrial dispute affects or is likely to affect the rights and interests of workmen as a class, industrial law envisages that for the purposes of maintaining industrial peace and harmony, such industrial dispute should have examination and adjudication by the forums constituted under the Act. No hard and fast rule can be laid down as to the number of workmen, whose joining hands, association, consensus and espousal would convert the dispute into an industrial dispute. Each case will have to be decided on its own facts, taking note of the nature of the dispute also. However, it has got to be noted that the strength of workmen espousing the cause must lead to a legitimate inference that the dispute is one which affects the workmen as a class..... It would be sufficient, if the industrial dispute has the support of a substantial body of the workmen concerned in the management. The industrial dispute could be raised even by a minority union or even by an unrecognised union."

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In that case, 120 casual workmen out of 735 workmen were represented by the Union. In this case, there are more than 451 members out of the total strength of 1200. Hence, the dispute should have been referred to as it has been raised by substantial number of workers.

In INDIAN EXPRESS NEWSPAPER v.. MANAGEMENT [1970 II LLJ 132] where a dispute espoused by a union in which 25 per cent of the working journalists were members, it was held by the Supreme Court that the Union had the necessary representative capacity to espouse the cause of the employees, and while reversing it set aside the decision of the Industrial Tribunal that the reference was invalid.

In AJAIB SINGH v.. THE SIRHIND CO-OPERATIVE MARKETING-CUM-PROCESSING SERVICE SOCIETYLTD. [1999 (4) SUPREME 51] the Supreme Court has held that -

> "While interpreting different provisions of the Act, attempt should be made to avoid industrial un-rest., secure industrial peace and to provide machinery to secure the end."

In INDIAN OXYGEN LTD. v.. WORKMEN [(1979) 3 SCC 291] the settlement of dispute was reached by collusion of the majority union with the company. But, substantial number of workmen not satisfied with the settlement. However, reference of dispute already covered by the settlement was held valid, and while holding so the Supreme Court said that it cannot be said that there is any legal bar to the reference of the dispute regarding one particular item of a package deal for adjudication by the Tribunal. In this case the Supreme Court has held that the settlement arrived at by the majority does not debar the State Government from making an Order of reference with reference to one aspect of the dispute.

The learned counsel for the petitioner also relied upon the judgment in MANUEL v.. MANAGEMENT OF NEEDLE INDUSTRIES (INDIA) LTD. [1981 (II) LLJ 102]. This is a case relating to reinstatement of a dismissed workman where this Court has held that the Courts have not laid down any particular manner by which an industrial dispute or difference should be raised. The real question was, if at the time of exercise of powers by Government under S.10, there exists or was apprehended a dispute or difference,

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then it would be competent for the appropriate Government to exercise its power under Section 10 of the Industrial Disputes Act.

5. Mr. R.Muthukumarasamy, learned Additional Advocate General appearing for R1 to R3, submitted that a Division Bench of this Court in M/s. SHAW WALLACE & CO. LTD. v.. STATE OF TAMIL NADU REP. BY THE COMMISSIONER AND SECRETARY, LABOUR DEPT. [1987 (I) LLJ 177] (Para 30) referred to the judgment of the Supreme Court where it was held that "The reasons generally shall relate to the larger interest of labour or the establishment of an industrial peace in the region and not on mere merits of the case either on law or facts." Thereafter, the Division Bench concluded as follows:

> " On a final analysis, the following principles emerge:-
> (1) The Government would normally refer the dispute for adjudication;
> (2) The Government may refuse to make reference, if -
> (a) the claim is very stale;
> (b) the claim is opposed to the provisions of the Act;
> (c) the claim is inconsistent with any agreement between the parties;
> (d) the claim is patently frivolous;
> (e) the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse;
> (f) the person concerned is not a workman as defined by the Act;
> (3) The Government should not act on irrelevant and extraneous considerations;
> (4) The Government should act honestly and bona fide;
>
> (5) The Government should not embark on adjudication of the dispute; and
> (6) The Government should not refuse reference on the ground that domestic enquiry was fairly and properly held and punishment awarded was appropriate."

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Applying this test to the facts of the present case, the Government considered the fact that most of the demands raised by the employees have been met and only one demand, namely, revision of wages, not conceded. Later on, even wages were fixed by the agreement entered into between the parties. Therefore, refusal to refer the matter to the Industrial Tribunal for adjudication is legally sustainable and there is no illegality.

6. The learned Additional Advocate General also referred to the another judgment of the Supreme Court in WORKMEN v.. IITI CYCLES OF INDIA LTD. [1995 Supp(2) SCC 733] where the Supreme Court has held as follows:

> "However, it is not obligatory on the part of the State Government to make a reference of the dispute in each and every case where the union seeks such reference. The Government has to weigh the facts keeping in mind the objective of industrial peace and smooth industrial relations between the parties. If, taking into consideration al the facts, the Government finds that in the interest of industrial peace, it is not necessary to make the reference, it may not do so. The Government has given reasons why it felt that in the present case, there was no case to make the reference and the reasons given cannot be said to be irrelevant. The question, therefore, is not whether in the present case, minority union or unions had or had no right to ask for a reference. The Government has not negatived the case of the unions for making the reference on the ground that they commanded membership of minority of the workmen. We, do not read the said order as such. Lastly, we also find that after the 1978 settlement, there have been at lest two more settlements and the present dispute is not only stale but has become completely irrelevant."

7. Mr. A.Jeenasenan, learned counsel for the fourth respondent, submitted that the respondent/hospital was established in the year 1985. He further submitted that in the letter seeking reference it was not stated as to how many persons participated in the general body meeting. Further, there is no authorisation by the general body to place the Charter of demands. Therefore, raising of the

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demands is not authorised by the general-body. Therefore, the Office Bearers without authority had raised this issue. Under those circumstances, the Government had considered the entire aspect and also taking into account the industrial peace and smooth industrial relations, before taking the decision 'not to refer the matter'. Therefore that Order is legally sustainable.

8. The point for consideration in this case is whether the State Government is bound to refer the matter when the Union requested the Government to refer the matter to Labour Court or Industrial Tribunal, when a charter of demand is made but was not accepted by the management and the subsequent conciliation fails, or it has got a discretion not to refer the matter for adjudication?

9. The learned counsel for the petitioner relied upon the judgment of the Supreme Court and the High Court, some of them are cases relating to dismissal of an employee from service. With respect to general demand, the Court has held that it is not necessary to refer a matter if the demands have been made by the Union represented by majority of workmen in that establishment. The Courts have held that it is sufficient if a substantial number of persons are represented by the Union (i.e. the criteria is not whether the Union represented by the majority or minority of employees). In this case, the Government while refusing to refer the matter has stated that this Association claims its membership as 451; whereas 751 employees have given a letter that they are satisfied with the pay given to them. In other words, they were of the view that the reference was not necessary. It did not stop there, the Order goes further and says that the establishment has met substantial number of demands made by the Union. Considering the fact that already substantial number of demands have been met and also the fact that in the interest of maintaining industrial peace and smooth industrial relations, the Government felt it was not necessary to refer the dispute to the Labour Court or Industrial Tribunal. This amounts to adjudication of the dispute which the Government has no right to do. Thus, the argument of the learned counsel for the petitioner is that whenever a dispute is raised by the Union, it shall be referred to the Labour Court by the Government.

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10. The case of the respondents is that it is not obligatory on the part of the Government to refer every dispute raised by a Union. Their contention is that the Government has got a right to decide whether the particular case deserves to be referred or not. It has got a right to weigh the facts keeping in view the objective of industrial peace and smooth industrial relations between the parties. If the Government finds that in the interest of industrial peace it is not necessary to make a reference, it may do so. Therefore, when the Government has taken a decision after taking into the entire facts and circumstances, that cannot be challenged.

11. The Supreme Court in IITI CYCLES OF INDIA's case (supra) held that -

> "..... it is not obligatory on the part of the State Government to make a reference of the dispute in each and every case where the union seeks such reference. The Government has to weigh the facts keeping in mind the objective of industrial peace and smooth industrial relations between the parties. If, taking into consideration al the facts, the Government finds that in the interest of industrial peace, it is not necessary to make the reference, it may not do so."

In view of the above decision of the Supreme Court, which has categorically, in an unambiguous term, held that it is not obligatory on the part of the State Government to make a reference in each and every case where the Union seeks such reference. The Government has a right to decide whether 'to refer' or 'not to refer' taking into account the industrial peace and smooth industrial relations between the parties. When the impugned Order is viewed in the light of this judgment of the Supreme Court, it would show that the Government has taken into account the industrial peace and smooth industrial relations between the parties and had taken a decision not to refer the matter for adjudication. The Government has also taken into account the fact that the number of demands raised by the Union had already been meted out by the management and the only demand which was not conceded was with respect to 'revision of wages'. The Government have the right to decide whether it was necessary, at any given point of time, to refer a

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matter to the Labour Court/Industrial Tribunal or not. For that, the Government is entitled to take into account the industrial peace and smooth industrial relations between the parties. Once such a decision is taken, taking into account the industrial peace and maintenance of smooth industrial relations, the Court cannot interfere with such a decision. It is not as if merely because a substantial number of workers want to raise a dispute, every such dispute should be referred to for adjudication. If that be done, then, that will jeopardise the industrial peace and smooth industrial relations between the workers and the management which may result in lock out and closure of the establishments which will ultimately detrimental to the employees and for the Industries as a whole. The impugned Order is not liable to be set aside. Therefore, the writ petition is liable to be dismissed.

12. In the result, the writ petition is dismissed. No costs.

Pb

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary to Government
   Labour and Employment Department,
   Chennai-9.

2. The Commissioner of Labour,
   D.M.S. Compound,
   Chennai-6.

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3. The Joint Commissioner of Labour,
   D.M.S. Compound,
   Chennai-6.

+ 1 CC to Govt. Pleader SR 1498

+ 1 CC to Mr. P.K. Gopal Raj, Advocate SR 1247

+ 1 CC to Mr. A. Jenasenan, Advocate SR 1274

PD Order in
WP No.14384/2000
7.1.2005

gm (co)

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